



[Billing Code: 6750-01-S]

FEDERAL TRADE COMMISSION
Agency Information Collection Activities; Submission for OMB
Review; Comment Request

AGENCY: Federal Trade Commission (“FTC” or “Commission”).

ACTION: Notice.

SUMMARY: The information collection requirements described below will be submitted to the Office of Management and Budget (“OMB”) for review, as required by the Paperwork Reduction Act (“PRA”). The FTC seeks public comments on proposed information requests sent pursuant to compulsory process to a combined ten or more of the largest domestic cigarette manufacturers and smokeless tobacco manufacturers. The information sought would include, among other things, data on annual sales and marketing expenditures. The current FTC clearance from the Office of Management and Budget (“OMB”) to conduct such information collection expires January 31, 2018. The Commission intends to ask OMB for renewed three-year clearance to collect this information.

DATES: Comments on the proposed information requests must be received on or before [INSERT DATE 30 days AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the SUPPLEMENTARY INFORMATION section below. Write: “Tobacco Reports: Paperwork Comment, FTC File No. P054507” on your comment, and file the comment online at

<https://ftcpublic.commentworks.com/ftc/tobaccoreportspra> by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania

Avenue, NW, Suite CC-5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed collection of information should be addressed to Michael Ostheimer, Division of Advertising Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Mailstop CC-10603, Washington, DC 20580. Telephone: (202) 326-2699.

SUPPLEMENTARY INFORMATION:

Title: FTC Cigarette and Smokeless Tobacco Data Collection

OMB Control Number: 3084-0134

Type of Review: Extension of currently approved collection

On August 10, 2017, the Commission sought comment on the information collection requirements associated with the Cigarette and Smokeless Tobacco Data Collection. 82 FR 37440 (“August 10, 2017 Notice”). Pursuant to the OMB regulations, 5 CFR Part 1320, that implement the PRA, 44 U.S.C. 3501 et seq., the FTC is providing a second opportunity for the public to comment while seeking OMB approval to renew the existing clearance for the information the FTC proposes to seek from the largest domestic cigarette manufacturers and smokeless tobacco manufacturers.

In response to the August 10, 2017 Notice, the Commission received comments from the Campaign for Tobacco-Free Kids (“CTFK”) and Altria Client Services (“Altria”).

The CTFK comment specifically noted the utility and importance of the Commission’s Cigarette and Smokeless Tobacco Reports, and urged the agency to continue collecting and

reporting industry sales and marketing expenditure data, which CTFK stated provide “critical data to researchers, policymakers, advocates and the general public.” CTFK additionally observed:

The FTC is currently the primary source for data on cigarette and smokeless tobacco companies’ marketing and promotional expenditures. No other agency collects and publishes such information directly from the companies, making the FTC reports the most accurate and reliable assessment of tobacco marketing and promotion expenditures available.

CTFK at 1.

CTFK, however, suggested certain modifications to the Commission’s reports. Specifically, CTFK recommended that the Commission: (1) report separately price discount expenditures for retailers and wholesalers; (2) clarify the definitions of certain expenditure categories – specifically, in which category coupons that consumers obtain online are to be counted; (3) report data on a company-specific or brand-specific basis, rather than on a fully-aggregated basis; (4) require manufacturers to report expenditures related to corporate sponsorships and advertisements; and (5) provide an option to download the published report data in spreadsheet format. *Id.* at 2.

The Commission agrees that collecting and reporting separately price discount expenditures for retailers and wholesalers is useful. Beginning with its 6(b) Orders for 2014, the Commission has been separately collecting and reporting information about price discounts paid to retailers and price discounts paid to wholesalers.

The Commission will clarify in future Orders that expenditures on coupons delivered online should be reported together with coupons delivered by other means. The full impact of

couponing by the major cigarette and smokeless tobacco manufacturers can only be seen if expenditures for all coupons are reported together, regardless of how those coupons are delivered to consumers.

Regarding CTFK's suggestion that data be reported on other than a fully-aggregated, nationwide basis, the cigarette and smokeless tobacco companies assert that those data are confidential and, as CTFK acknowledges, the Commission cannot publicly release trade secrets or certain commercial or financial information. *Id.* at 2 n.2.

As for requiring manufacturers to report expenditures related to corporate sponsorships and advertisements, the Commission already requires the recipients of its 6(b) Orders to report certain expenditures made in the name of the company, rather than any of its brands.¹ However, the Commission does not include those data in its Cigarette and Smokeless Tobacco Reports. The Commission will consider whether those expenditures should be reported in the future or whether to cease collecting this information.

The Commission agrees that it would be helpful to provide an option to download the published report data in spreadsheet format and will begin doing so with its next published reports.

Altria stated that the Commission should no longer collect any information from cigarette and smokeless tobacco manufacturers "in light of the Food and Drug Administration's ... extensive, active regulatory authority over tobacco products under the Family Smoking Prevention and Tobacco Control Act," calling such collections "superfluous" and "unnecessary burdens." Altria at 1, 3. Altria contends that the FTC's most recent requests seek "not only

¹ Both the cigarette and smokeless tobacco Orders require the recipients to report expenditures on "public entertainment events (including, but not limited to, concerts and sporting events) bearing or otherwise displaying the name of the Company or any variation thereof but not bearing or otherwise displaying the name, logo, or an image of any portion of the package" of any of its cigarettes or smokeless tobacco products, or otherwise referring to those products.

information that the companies already produce to FDA, but also information unrelated to the advertising and promotion of tobacco products.” *Id.* at 3-4. It gives the following examples:

- (a) cigarette design data, including cigarette length, style, flavor, and filter type;
- (b) constituent data, including nicotine, carbon monoxide, and tar; (c) lists of cigarettes first sold or discontinued in 2016; and (d) lists of other product information, including brand varieties, pack size, and package type.

Id. at 4 n.15. Altria also suggests that the FTC has recently expanded its requests to seek information on expenditures from parent companies that do not sell or advertise tobacco products. *Id.* at 3.

The FTC staff and FDA staff have a long tradition of working together on the many areas where the two agencies share jurisdiction. The FDA is not collecting cigarette or smokeless tobacco sales and marketing expenditure data like that required by the Commission’s 6(b) Orders, so there is no overlap or duplication with respect to such data. Moreover, to the extent there might be some overlap in the collection of information about whether brand styles of cigarettes are filtered or unfiltered, menthol or non-menthol, and their cigarette length, the Commission needs those data so it can combine them with sales information for each brand style in order to report the percentages of cigarettes sold by the leading manufacturers falling into each product type category (e.g., 26% of the cigarettes sold by these manufacturers in 2015 were menthol). FDA is not collecting cigarette sales information, so it cannot calculate sales percentages by product types. The Commission intends to continue collecting cigarette and smokeless tobacco sales and marketing expenditure data, together with cigarette length, flavor, and filter information. To the extent that in the future the FDA duplicates the FTC’s data collection, the FTC can modify or cease its collection.

Until 2000, the Commission collected cigarette tar, nicotine, and carbon monoxide yields and published that information by brand style. Because of concerns that the yield information was misleading consumers, the Commission ceased publishing that information, but it has continued to collect tar, nicotine, and carbon monoxide yields to the extent recipients of the 6(b) Orders possess it, and the Commission releases the data to researchers in response to Freedom of Information Act requests. In recent years, however, there have been very few requests for the data. Given that the Commission no longer publishes tar, nicotine, and carbon monoxide reports and the limited interest in these data, the Commission intends to cease collecting tar, nicotine, and carbon monoxide yield data.

There are other information fields that the Commission no longer needs to collect, including information about cigarette package type, cigarette package size, cigarette styles, and whether a cigarette variety's tar yield and its nicotine yield are disclosed on its package. The Commission intends to continue to collect UPC-Codes in order to distinguish one variety from another, but does not need any other variety descriptors beyond cigarette length, flavor, and filter information. The Commission also no longer needs lists of cigarettes first sold or discontinued in a calendar year.

Contrary to Altria's suggestion, the FTC did not recently expand its requests to seek information from parent companies. More than a decade ago, the Commission began directing its orders to the ultimate domestic parents of the cigarette and smokeless tobacco manufacturers because some parent companies owned more than one subsidiary selling those products and the Commission wanted to ensure that no relevant data from affiliated companies went unreported. Moreover, the 6(b) Orders ask several questions about whether the recipient engages in certain practices, such as paying for cigarette or smokeless tobacco product placement in movies, and

the Commission wants to be sure that such practices by any related company are reported, even if that company does not itself sell cigarette or smokeless tobacco products. The Commission intends to continuing directing its 6(b) Orders to the parent companies of the leading cigarette and smokeless tobacco manufacturers.

Burden Statement:²

Estimated Annual Burden: 1,980 hours³

Estimated Number of Respondents: 15 maximum

These estimates include any time spent by separately incorporated subsidiaries and other entities affiliated with the ultimate parent companies that receive the information requests.

Estimated Average Burden Per Year Per Respondent: 180 hours

- (a) Information requests to the four largest cigarette companies and five largest smokeless tobacco companies, at a per company average each year of 180 hours = 1,620 hours, cumulatively, per year; and
- (b) Information requests to six additional respondents, of smaller size, at a per company average each year of 60 hours = 360 hours, cumulatively, per year.

Estimated Annual Labor Cost: \$198,000

Estimated Capital or Other Non-Labor Cost: de minimis

Request for comment: You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before [INSERT DATE 30

² The details and assumptions underlying these estimates were set forth in the August 10, 2017 Federal Register notice.

³ The Commission intends to use this PRA clearance renewal to collect information from the companies concerning their marketing and sales activities for the years 2017, 2018, and 2019. The Commission expects to issue compulsory process orders seeking this information annually, but it is possible that orders might not be issued in any given year and that orders seeking information for two years would be issued the next year. The figures set forth in this notice for the estimated hours and labor costs associated with this information collection represent average annual burden over the course of the prospective PRA clearance.

days AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Write “Tobacco Reports: Paperwork Comment, FTC File No. P054507” on your comment. Your comment – including your name and your state – will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Website, at <http://www.ftc.gov/os/publiccomments.shtm>.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online, or to send them to the Commission by courier or overnight service. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublic.commentworks.com/ftc/tobaccoreportspra>, by following the instructions on the web-based form. When this Notice appears at <http://www.regulations.gov/#!/home>, you also may file a comment through that website.

If you file your comment on paper, write “Tobacco Reports: Paperwork Comment, FTC File No. P054507” on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible FTC Website at <https://www.ftc.gov/>, you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else’s Social Security

number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any "trade secret or any commercial or financial information which . . . is privileged or confidential" – as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2) – including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled "Confidential," and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the public FTC Website – as legally required by FTC Rule 4.9(b) – we cannot redact or remove your comment from the FTC Website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before [INSERT DATE 30 days AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. For information

on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/site-information/privacy-policy>.

Comments on the information collection requirements subject to review under the PRA should additionally be submitted to OMB. If sent by U.S. mail, they should be addressed to Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission, New Executive Office Building, Docket Library, Room 10102, 725 17th Street, NW, Washington, D.C. 20503. Comments sent to OMB by U.S. postal mail are subject to delays due to heightened security precautions. Thus, comments instead can also be sent via email to wliberante@omb.eop.gov.

David C. Shonka

Acting General Counsel.

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